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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,971	12/19/2001	Joseph P. Russo	EMC-01-109	4871

24227 7590 08/11/2005

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EXAMINER

PARDO, THUY N

ART UNIT PAPER NUMBER

2165

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,971

Applicant(s)

RUSSO ET AL.

Examiner

Thuy Pardo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-19 and 22-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6,9-19 and 22-28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's Request for RCE filed on June 20, 2005 has been reviewed. Claims 7, 8, 20, 21, and 29 have been canceled, and claims 1, 9, 14, 22, and 27 have been amended.
2. Claims 1-6, 9-19 and 22-28 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 9-19 and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka et al. (Hereinafter "Otsuka") US Patent No. 6,697,823., in view of Whiting et al. (Hereinafter "Whiting") US Patent No. 5,778,395.

As to claim 1, Otsuka teaches the invention substantially as claimed, comprising steps of:
using an application server [the application company 5 is an organization capable of providing applications as software to the computer system, col. 5, lines 47-53; 5a of fig. 1] for selectively presenting a user using a computer other than the backup or restore server with a

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graphical or command line generic user interface [the public terminal 1 includes a LAN interface 29, and is connected to the network 7, col. 15, lines 51-54; fig. 7] for performing a dialogue [through the public media for performing a dialogue with a user, see the fig. 1]; and

using information acquired in the dialogue for configuring for or performing a backup or restore operation [fig. 6, 9, 14A-14C, 16-19, col. 4, lines 17-60] on the backup server [col. 2, lines 16-24, 44-47].

However, Otsuka does not explicitly teach that either the selective action of configuring or performing a backup or restore operation is carried out by the agent through communications with an application program interface although Otsuka teaches the application server may have the satellite communication section so that applications can be provided through the satellite communication, or through LAN interface connected to the network for performing a dialogue with a user [see the fig. 1, col. 15, lines 51-54; fig. 7]. Whiting teaches that either the selective action of configuring or performing a backup or restore operation is carried out by the agent through communications with an application program interface [col. 7, lines 19 to col. 8, lines 20; 108 of fig. 1].

Therefore, it would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to add the limitation of Whiting to the system of Otsuka as an essential means to provide higher security and decrease the amount of network bandwidth required for performing the backup

As to claim 2, Otsuka and Whiting teaches the invention substantially as claimed.

Whiting further teaches using data structures created by function calls that are part of the

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application program interface that communicates directly with the agent [col. 7, lines 19 to col. 8, lines 20; 108 of fig. 1].

As to claim 3, Otsuka and Whiting teach the invention substantially as claimed. Whiting further teaches that the data structures are shared by more than one application program interface and the agent [fig. 1].

As to claim 4, Otsuka and Whiting teach the invention substantially as claimed. Otsuka further an application program interface that is directed toward configuring a client application for the backup or restore operation [fig. 8].

As to claim 5, Otsuka and Whiting teach the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward interfacing with a client application for carrying out the backup or restore operation [fig. 8-14].

As to claim 6, Otsuka and Whiting teach the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward browsing a client application for objects to configure for or for carrying out the backup or restore operation [fig. 21-22].

As to claim 14, it is a corresponding apparatus claim of claim 1. Therefore, it is rejected under the same rationale.

As to claims 9-13 and 15-29, all limitations of these claims have been addressed in the analysis above, and these claims are rejected on that basis.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy Pardo, whose telephone number is 571-272-4082. The examiner can normally be reached Monday through Thursday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached at 571-272-4146.

The fax phone number for the organization where this application or proceeding is assigned as follows: 571-273-8300 (Official Communication)

and/or:

571-273-4082 (*Use this Fax#, only after approval by Examiner, for "INFORMAL" or "Draft" communication. Examiner may request that a formal/amendment be faxed directly to then on occasions*).

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

5. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

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Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 308-5359, (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington, VA., Sixth Floor (Receptionist).

August 05, 2005

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the bottom.

**THUY N. PARDO
PRIMARY EXAMINER**